

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JIM T. GLOVER, JR.,)	CASE NO. 1: 18 CV 1134
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>ORDER ADOPTING REPORT</u>
)	<u>AND RECOMMENDATION</u>
CORPORAL BOARDMAN, <i>et al.</i> ,)	
)	
Defendants.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Jennifer Dowdell Armstrong (ECF #64) regarding the Motion for Summary Judgment of the individual Defendants Steven Boardman and Philip Irion, Jr. (ECF #52) on the amended complaint of *pro se* plaintiff Jim T. Glover.¹ In his amended complaint, Plaintiff asserts a § 1983 excessive force claim alleging that while he was a detainee at the Cuyahoga County Corrections Center (“CCCC”), Defendants Boardman and Irion, who were corrections officers at CCCC, “brutally beat and deployed oleoresin capsicum (OC) spray against him and severely injured him.” Plaintiff asserts that the attack was unprovoked and constituted excessive force in violation of his Fourth and Fourteenth Amendment rights. (ECF #36 at 162, 171)

Magistrate Judge Armstrong examined the arguments and evidence submitted by the

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Defendant Cuyahoga County submitted a verbatim copy of the individual defendants’ motion for summary judgment which did not seek summary judgment on the *Monell* claim asserted against the County. Following the filing of Magistrate Judge Armstrong’s Report and Recommendation (ECF #64), the County’s motion for leave to correct its filing error and submit its motion for summary judgment as to Plaintiff’s *Monell* claim was granted. (ECF #65 and #66) Magistrate Judge Armstrong will issue a new report and recommendation on the County’s motion for summary judgment when briefing is complete. As such, any analysis of the County’s motion for summary judgment will be disregarded at this time.

individual Defendants in support of their motion for summary judgment and the argument and statements of Plaintiff submitted in opposition, and accepted “as part of the Rule 56(c) record” since Plaintiff “swore to them under penalty of perjury.” First addressing Defendants’ assertion that they were entitled to qualified immunity, Magistrate Judge Armstrong found that “at this stage of the proceedings the facts indicate that Defendants violated Plaintiff’s constitutional right to be free from excessive force, and that they knew they were doing so.” (ECF 64 at 16) Any argument to the contrary rests largely upon credibility determinations which preclude a grant of summary judgment. In light of her findings regarding qualified immunity, Magistrate Judge Armstrong also determined that Defendants were not entitled to summary judgment on Plaintiff’s § 1983 excessive force claim because assessing the credibility of each party’s version of the events and weighing the evidence are issues for a trier of fact to resolve. Accordingly, Magistrate Judge Armstrong recommends that Defendants’ motion for summary judgment be denied.

No objection to the Report and Recommendation has been filed.

Standard of Review


The applicable standard of review of a magistrate judge’s report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED R. CIV. P. 72(b)(3). When no timely objection is filed, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s notes (citations omitted). See also, *Thomas v. Arn*, 474 U.S. 140, 150 (1985)(“It does not appear that Congress intended to require district court review of magistrate

judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to these findings.”)

The Court has carefully reviewed the Report and Recommendation and the submissions of the parties and agrees with the analysis and findings of Magistrate Judge Armstrong.

Accordingly, the Report and Recommendation of Magistrate Judge Armstrong (ECF #64) is ADOPTED. The Motion of Defendants' Boardman and Irion for Summary Judgment (ECF #52) is denied.

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: December 7, 2022